

603 KAR 10:021. Electronic advertising devices.

RELATES TO: KRS 177.572-177.576, 177.830-177.890, 177.990(2)

STATUTORY AUTHORITY: KRS 177.860, 23 U.S.C. 131

NECESSITY, FUNCTION, AND CONFORMITY: KRS 177.860 requires the Commissioner of the Department of Highways to promulgate administrative regulations establishing standards for advertising devices. KRS 177.890 authorizes the Commissioner of the Department of Highways to enter into agreements with the United States Secretary of Transportation in order to carry out national policy relating to interstate, defense, and federal-aid primary highways within the state. 23 U.S.C. 131, the Highway Beautification Act, authorizes retention of additional federal funding on the establishment of controls over the placement of outdoor advertising devices. This administrative regulation establishes the standards for on-premise and off-premise electronic advertising devices.

Section 1. General Conditions Relating to Off-Premise Electronic Advertising Devices. (1) An electronic advertising device visible from the main travelled way on an interstate, parkway, national highway system, or federal-aid primary highway shall be prohibited in a protected area unless the device is located in an urban area or urbanized area.

(2) An advertising device in a protected urban area shall be:

(a) A legal, but not a nonconforming, static advertising device in existence or approved pursuant to a permit issued within one (1) calendar year prior to the effective date of this administrative regulation that is proposed for conversion to an electronic advertising device;

(b) Within 660 feet of right-of-way; and

(c) Compliant with the ordinances or regulations of a local governing body that specifically regulates the erection and maintenance of electronic advertising devices.

(3) An electronic advertising device in an urbanized protected area shall be:

(a) 1. Within 660 feet of right-of-way; and

2. Compliant with the ordinances or regulations of a local governing body that specifically regulates the erection and maintenance of electronic advertising devices; or

(b) Compliant with a variance that has been granted by a local governing body such as a planning and zoning commission.

(4) An off-premise electronic advertising device shall not be converted to an off-premise static advertising device prior to receiving a permit pursuant to 603 KAR 10:010.

(5) An electronic advertising device that is visible from more than one (1) interstate, parkway, national highway system, or federal-aid primary highway shall meet the requirements for each highway independently.

(6) The erection or existence of an electronic advertising device shall be prohibited in a protected area if the device:

(a) Advertises an activity that is prohibited by law;

(b) Is abandoned or discontinued;

(c) Is not clean and in good repair;

(d) Is not securely affixed to a substantial structure permanently attached to the ground;

(e) Directs the movement of traffic;

(f) Interferes with, imitates, or resembles an official traffic sign, signal, or traffic control device;

(g) Prevents the driver of a vehicle from having a clear and unobstructed view of an official sign or approaching or merging traffic;

(h) Is erected or maintained upon a tree;

(i) Is erected upon or overhanging the right-of-way;

- (j) Has a facing larger than 672 square feet;
- (k) Has more than one (1) face per facing;
- (l) Is a non-billboard electronic advertising device; or
- (m) Is mobile, temporary, or vehicular.

(7) An on-premise advertising device shall not affect spacing requirements for an off-premise electronic advertising device.

(8) An electronic advertising device shall not contain extensions to the face.

(9) Interior angles between two (2) facings of an electronic advertising device shall not exceed forty-five (45) degrees.

(10) The name of the owner of an electronic advertising device shall be legible from the main traveled way and shall not be larger than twenty (20) square feet. The owner's name shall be shown without other owner information and shall not be considered a message.

(11) The message on an electronic advertising device shall:

- (a) Be static for at least eight (8) seconds;
- (b) Change from one (1) message to another in less than two (2) seconds;
- (c) Not blink, scroll, or contain animation or video; and
- (d) Be programmed to freeze in a static display if a malfunction occurs.

(12) An electronic advertising device shall be equipped with a sensor or other device that automatically determines the ambient illumination and shall be programmed to automatically dim to a luminance of 300 nits or less if the ambient light is 1.5 foot candles or less.

(13) Spacing between off-premise advertising devices per visible direction of travel on interstates, parkways, national highway systems, or federal-aid primary highways shall be at least:

- (a) 2,500 feet between off-premise electronic advertising devices; or
- (b) 500 feet between an off-premise electronic advertising device and an off-premise static advertising device.

Section 2. Exchange of Billboards for Permit. (1) An exchange of six (6) existing off-premise advertising devices shall be required for one (1) new off-premise electronic advertising device permit located within the protected area of an interstate, parkway, national highway system, or federal aid primary highway.

(2) An exchange of five (5) existing off-premise advertising devices shall be required for the conversion of an existing legal static advertising device in an urban area or an urbanized protected area to an off-premise electronic advertising device.

(3) An off-premise advertising device to be exchanged shall be:

- (a) Situated in an unpermissible location in a protected area;
- (b) Visible from a scenic highway;
- (c) Currently nonconforming as established in Section 5 of this administrative regulation or pursuant to local regulations; or
- (d) Illegal.

(4) An advertising device proposed for an exchange for a permit shall be no less than fifty (50) square feet per facing.

(5) An advertising device proposed for exchange that meets the requirements of subsections (3) and (4) of this section shall be approved by the department prior to exchange.

(6) The owner of an exchanged advertising device shall receive credit by the department for each advertising device removed after the effective date of this administrative regulation.

(7) If an advertising device is removed by an owner in order to obtain a permit under this administrative regulation, but the permit is denied by the department, the department shall credit the owner for the removed device pending the outcome of the appeal or until a permit is filed for another advertising device.

(8) If the permittee voluntarily removes an advertising device and receives credit toward a permit for an electronic advertising device, the permittee waives any right or claim to any additional compensation from the department for that device.

Section 3. Off-premise Electronic Advertising Devices on Interstates and Parkways. (1) Electronic advertising devices shall only be erected or maintained in a protected area of an interstate or parkway that:

(a) Is zoned industrial or commercial and was an incorporated municipality on September 21, 1959; or

(b) Was zoned commercial or industrial and included a commercial industrial land use on September 21, 1959.

(2) An electronic advertising device shall be no closer than fifty (50) feet to the edge of the main traveled way or turning roadway of the interstate or parkway.

Section 4. Off-Premise Electronic Advertising Devices on National Highway System and Federal-Aid Primary Highways. An electronic advertising device visible from a national highway system or federal-aid primary highway shall be erected and maintained in:

(1) A commercial or industrial zone; or

(2) An unzoned commercial or industrial area with a commercial or industrial activity that is located on the same side of the highway and within 700 feet of the activity boundary line measured along or parallel to the pavement of the highway.

Section 5. Nonconforming Electronic Advertising Devices. (1) A nonconforming electronic advertising device in a protected area shall not require a permit and shall continue to exist if the device:

(a) Has not been abandoned or discontinued;

(b) Has been subjected to only routine maintenance as established in subsection (7) of this section;

(c) Is in compliance with state law and administrative regulations as well as local zoning, sign, or building restrictions at permitting; and

(d) Remains substantially the same including the structure as it was on the effective date of the state law or administrative regulation that made the device nonconforming.

(2) The owner of a nonconforming advertising device shall submit biennial updates on a completed Advertising Device Biennial Certification Form, TC Form 99-206.

(3) An incomplete or inaccurate submission shall not be considered an update submittal.

(4) The update submittal for a nonconforming electronic advertising device shall be submitted electronically to the department pursuant to the following table:

Dept. of Highways' District #	Submittal Year	Submittal Period*
1 & 7	Odd	January 1 - April 30th
2 & 4	Even	January 1 - April 30th
3 & 9	Odd	May 1st - August 31st
6 & 8	Even	May 1st - August 31st
5 & 11	Odd	September 1st - December 31st
10 & 12	Even	September 1st - December 31st

*A submittal shall be received during the submittal period to be considered.

(5) Failure to submit an update within thirty (30) days of the deadline established in subsection (4) of this section shall subject the owner of the nonconforming electronic advertising device to a fine of \$250 per permit pursuant to KRS 177.990(2).

(6) A nonconforming advertising device may be sold, leased, or transferred without affecting its status, but its location shall not be changed. A transfer of ownership for a nonconforming advertising device shall be submitted on a completed Advertising Device Ownership Transfer, TC Form 99-205.

(7) An owner may conduct routine maintenance of a nonconforming electronic advertising device. Routine maintenance shall include:

(a) In kind replacement of material components with a like material component;

(b) Painting of supports and frames;

(c) Changing existing nonstructural light fixtures for energy efficiency;

(d) Replacement of nuts, bolts, or nails;

(e) A safety related addition such as a catwalk that does not prolong the life of the advertising device but provides protection for workers; and

(f) Rebuilding a destroyed advertising device.

(8) Non routine maintenance shall include:

(a) Enlargement of the device;

(b) A change in the structural support including material diameters, dimensions, or type that would result in increased economic life such as replacement of wood posts with steel posts or the replacement of a wood frame with a steel frame;

(c) The addition of bracing, guy wires, or other reinforcement;

(d) A change in the location of the structure; or

(e) A change in the direction of the face.

(9) Non routine maintenance on a nonconforming electronic advertising device shall constitute a violation of this administrative regulation and action shall be taken pursuant to Section 9 of this administrative regulation.

Section 6. On-Premise Advertising Devices. (1) An on-premise advertising device shall only advertise or promote the activities or products offered on the property where the advertising device is located.

(2) An on-premise electronic advertising device shall be erected on the property where the business is located and:

(a) Inside the activity boundary line; or

(b) No farther than 400 feet from the activity boundary line.

(3) An on-premise advertising device placed within fifty (50) feet of the activity boundary line shall not exceed the maximum size established in KRS 177.863(3)(a). An entrance or exit on the property shall be considered within the activity boundary line.

(4) An on-premise electronic advertising device that complies with this administrative regulation shall only be erected:

(a) 1. Within 660 feet of the right-of-way of an interstate, parkway, national highway system, or federal-aid primary highway both in and outside of an urban area; or

2. Outside of an urban area and beyond 660 feet of the right-of way of an interstate, parkway, national highway system, or federal-aid primary highway; and

(b) If the device complies with this administrative regulation, and county or city zoning ordinances pursuant to KRS 177.860(4).

(5) If further than fifty (50) feet outside of the activity boundary line, an on-premise electronic advertising device shall not exceed:

(a) Twenty (20) feet in length, width, or height; and

(b) 150 square feet in area, including border and trim and excluding supports.

(6) More than one (1) on-premise electronic advertising device shall not be located at a distance greater than fifty (50) feet outside of the activity boundary line.

(7) If taking measurements for the placement of an on-premise electronic advertising device for an industrial park, the service road shall be considered within the activity boundary line of the industrial park.

(8) An on-premise electronic advertising device erected to advertise one (1) of the businesses in a shopping center, mall, or other combined business location shall not be located more than fifty (50) feet outside of the activity boundary line of the business being advertised.

(9) If taking measurements for the placement of an on-premise electronic advertising device for a shopping center, mall, or other combined business location, the combined parking area shall be considered within the activity boundary line.

(10) An on-premise static advertising device erected for a shopping center, mall, or other combined business location shall either:

(a) Identify a business or businesses conducted at the location; or

(b) Include a display area used to advertise on-premise activities.

(11) An on-premise electronic advertising device erected for a shopping center, mall, or other combined business location may either:

(a) Identify each of the individual businesses conducted at the location; or

(b) Include a display area used to advertise on-premise activities.

(12) An on-premise advertising device shall not:

(a) Move, or have moving or animated parts;

(b) Be erected or maintained on a tree; or

(c) Be erected upon or overhanging the right-of-way.

(13) An on-premise electronic advertising device shall be equipped with a sensor or other device that automatically determines the ambient illumination and shall be programmed to automatically dim to a luminance of 300 nits or less if the ambient light is 1.5 foot candles or less.

(14) An on-premise electronic advertising device shall not affect the spacing requirements of a device as established in KRS 177.863(2)(d).

(15) Extensions of a facing up to fifteen (15) percent shall be allowed on an electronic advertising device:

(a) Within fifty (50) feet of the activity boundary line but shall not exceed the maximum size of the facing of the advertising device as established in KRS 177.863(3)(a); or

(b) Outside of fifty (50) feet of the activity boundary line but shall not exceed the maximum size of the advertising device in subsection (4)(b) of this section.

(16) An on-premise electronic advertising device shall be in compliance with the provisions of this administrative regulation but shall not require a permit.

Section 7. Scenic Highways and Byways. (1) After designation of a scenic highway by the Transportation Cabinet, additional off-premise electronic advertising devices shall not be erected, allowed, or permitted that are visible from the scenic highway.

(2) The sponsor of a scenic byway application may petition the Transportation Cabinet to impose the same administrative regulations for an electronic advertising device located on a scenic byway as an electronic advertising device located on a scenic highway.

(3) Only routine maintenance shall be performed on an off-premise electronic advertising device legally in existence on the date of the scenic highway designation.

Section 8. Permits, Renewals, and Transfers. (1) The requirements of this section shall apply to off-premise electronic advertising devices on an interstate, parkway, national highway

system, or federal-aid primary highway.

(2) With the exception of nonconforming electronic advertising devices, a permit shall be required from the department for a device located in a protected area.

(3) The initial permit shall be valid until the expiration of the applicable renewal period. If the renewal period falls within six (6) months of the initial permit issuance, the initial permit shall be valid until the next renewal period.

(4) An application for an electronic advertising device permit shall be made on a completed Application for Advertising Device, TC Form 99-31.

(5) The issuance of an advertising device permit shall be determined based on the order in which a completed application is made to the department.

(6) A permittee shall submit biennial renewals on a completed Advertising Device Biennial Certification Form, TC Form 99-206. An incomplete or inaccurate submission shall not be considered.

(7)(a) If submitting a biennial renewal, the permittee shall certify that the electronic advertising device meets the permit requirements of this administrative regulation.

(b) If the electronic advertising device no longer meets the permit requirements of this administrative regulation, the permittee may request a conditional renewal to allow the permittee to become compliant with the permit requirements.

(c) If the permittee fails to become compliant within thirty (30) days, the permit shall not be renewed.

(8) A renewal submittal for an electronic advertising device shall be submitted electronically to the department pursuant to the following schedule:

Dept. of Highways' District #	Submittal Year	Submittal Period*
1 & 7	Odd	January 1- April 30th
2 & 4	Even	January 1- April 30th
3 & 9	Odd	May 1st- August 31st
6 & 8	Even	May 1st- August 31st
5 & 11	Odd	September 1st – December 31st
10 & 12	Even	September 1st – December 31st

*A submittal shall be received during the submittal period to be considered.

(9) Failure to submit a renewal within thirty (30) days of the deadline established in subsection (8) of this section shall subject the owner of the nonconforming electronic advertising device to a fine of \$250 per permit pursuant to KRS 177.990(2).

(10) An electronic advertising device may be sold, leased, or otherwise transferred without affecting its status, but its location shall not be changed. A transfer of ownership for an electronic advertising device shall be submitted on a completed Advertising Device Ownership Transfer, TC Form 99-205.

(11) An application amendment for substantial change to an approved electronic advertising device permit shall be submitted and approved by the department prior to work being performed. Substantial change to an advertising device shall include:

(a) Enlargement of the device;

(b) Replacement, rebuilding, or re-erection of a device that has not been destroyed;

(c) A change in the structural support including material diameters, dimensions, or type that would result in increased economic life such as replacement of wood posts with steel posts or

the replacement of a wood frame with a steel frame;

(d) A change or upgrade in the technology related to the electronic advertising device;

(e) The addition of bracing, guy wires, or other reinforcement;

(f) A change in the location of the structure; or

(g) A change in the direction of the face.

(12) The permit for an off-premise electronic advertising device that has not been constructed prior to the renewal date shall be cancelled.

Section 9. Notice of Violations; Appeals. (1) The department shall notify the owner of an electronic advertising device by certified letter that the device is in violation of KRS Chapter 177 or this administrative regulation.

(2)(a) An owner aggrieved by the findings of the department may request an administrative hearing pursuant to KRS Chapter 13B. The request shall be in writing and within twenty (20) days of the certified letter.

(b) A request for a hearing shall thoroughly detail the grounds upon which the hearing is requested.

(c) The hearing request shall be addressed to the Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622.

(3) If the owner fails to request an administrative hearing or fails to remedy the violations within thirty (30) days, the department shall proceed to take legal action pursuant to Section 10 of this administrative regulation.

Section 10. Penalties. (1) The owner of an electronic advertising device who violates a provision of this administrative regulation shall be assessed a penalty of \$500 per violation pursuant to KRS 177.990(2).

(2) The department shall deny or revoke a permit if the permit application contains false or materially misleading information.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Advertising Device", TC Form 99-31, May 2013;

(b) "Advertising Device Ownership Transfer", TC Form 99-205, December 2013;

(c) "Advertising Device Biennial Certification Form", TC Form 99-206, December 2013;

(d) "Agreement for Carrying Out National Policy Relative to Control of Outdoor Advertising in Areas Adjacent to the National System of Interstate and Defense Highways and the Federal-Aid Primary System", December 23, 1971; and

(e) The formal designation of interstates, parkways, national highway system, and federal-aid primary highways by the Transportation Cabinet on the cabinet's Web site at: <http://maps.kytc.ky.gov/PAFOA/>.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet Building, Department of Highways, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the cabinet's Web site at <http://transportation.ky.gov/Construction/Pages/Kentucky-Standard-Specifications.aspx>. (41 Ky.R. 2458; Am. 42 Ky.R. 371; 173; eff. 11-5-2015.)